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ADDENDUM TO INTERPRETATIVE RULINGS OF THE SELECT COMMITTEE ON ETHICS

SELECT COMMITTEE ON ETHICS

UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

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FOREWORD

Pursuant to the authority granted to the Select Committee on Ethics by the Senate in Senate Resolution 110, 95th Congress, 1st Session, the Committee herewith publishes Interpretative Rulings issued by the Committee since February 1985, the date of the Committee's last publication of these Rulings. The previous publication, together with this booklet, constitutes a complete list of Interpretative Rulings which have been issued by the Committee since 1977.

When you receive this booklet, please (a) place it in the back cover of the previous Interpretative Ruling publication, and (b) update the previous Interpretative Ruling publication by deleting Ruling Nos. 41, 46, 91, 106, 168, 210, 274 and 341.

Rulings 409, 410, and 412 reverse previous rulings of the Committee. Ruling 409 replaces 341; 410 replaces Nos. 41 and 210; and 412 replaces 274.

These Interpretative Rulings answer questions of a general interest which have been raised by Members, officers and employees of the Senate with respect to the application of the Code of Official Conduct (Rules 34 through 42 of the Standing Rules of the Senate), the franked mail statute and Regulations Governing the Use of the Mailing Frank, and other related matters. The Interpretative Rulings are presented chronologically by rule number and appear with clear references as to the particular rule or statute being addressed.

These Interpretative Rulings may be relied upon by any individual involved in a specific action or activity which is indistinguishable in all its material aspects from the facts on which a particular ruling has been rendered. The Committee encourages written requests for rulings on specific situations not clearly covered by a previously issued Interpretative Ruling. In addition, the Committee staff is available by telephone to discuss issues involving the application of the Code of Official Conduct or the scope of a previously published Interpretative Ruling.

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INTERPRETATIVE RULING No. 395

Date issued: April 23, 1985

Applicable Area: Franking

Question considered:

The franking statute (39 U.S.C. 3210 et seq.) authorizes the franking of letters of congratulations to individuals who have achieved some "public distinction." Are the following "public distinctions" for purposes of the Act?

(1) a Sr. High School student who is graduating as valedictorian;

(2) a Sr. High School student who is graduating as salutatorian; and

(3) Sr. High School students who are graduating within the top ten academic ranking of their class.

Ruling:

While being named valedictorian or salutatorian of your high school or graduating within the top ten academically are certainly significant personal achievements, such accomplishments do not constitute "public distinctions" for purposes of the franking statute.

INTERPRETATIVE RULING No. 396

Date issued: May 13, 1985

Applicable Rule: 37

Question considered:

How do the post-employment lobbying restrictions of Rule 37, paragraph 9 ("Conflict of Interest") apply to a former Senate employee who held positions with several Senators during his career, including two different Chairmen during the last six months of Senate employment?

Standing Rule 37, paragraph 9 provides that "[i]f an employee on the staff of a committee upon leaving his position becomes . . . a registered lobbyist or is employed or retained by a . . . registered lobbyist for the purpose of influencing legislation, such employee may not lobby Members of the committee for which he worked or the staff of that committee for a period of one year after leaving his position." Rule 37, paragraph 10(c) provides the definition for the term "lobbying".

Facts:

The long-time staff director of a Senate committee retired on January 3, 1985 to begin a new career as a consultant to a political organization. During his employment with the committee, he was supervised by several Chairmen. A few weeks after his retirement, the new committee Chairman asked the staff director to return to the Senate payroll as a consultant to the committee for about six weeks so as to provide a transition period for the new staff director. The former staff director, who had been contemplating registering as a lobbyist under the 1946 Federal Regulation of Lobbying Act, was unsure about whether the restrictions of Rule 37, paragraph 9, were applicable to his committee associations as of January 3, the date of his initial retirement, or as of the conclusion of his subsequent six-week consultancy to the committee.

Ruling:

Where an employee leaves the Senate payroll and registers as a lobbyist under the 1946 Federal Regulation of Lobbying Act, the post-employment lobbying restrictions of Rule 37, paragraph 9, would prohibit such an individual from "lobbying" the Senators and staff who held positions with that individual's former committee on the final day of his employment with the committee. Under the facts presented, such date was deemed to be the termination of the employee's six-week consultancy with the committee rather than the earlier date on which he had "retired".

An individual who is uncertain as to whether he is required to register pursuant to the Lobbying Act should confer with the Clerk of the House of Representatives.

INTERPRETATIVE RULING No. 397

Dated issued: May 24, 1985

Applicable Rules: 34, 37

Question considered:

What Senate Rules or ethical considerations are relevant with regard to a Senator's spouse accepting a compensated position with a tax-exempt, educational organization whose purpose is educating the public on a policy issue before the Congress?

Facts:

A Washington, D.C. based, tax-exempt, educational organization has offered the spouse of a Senator a compensated position as its Director of Public Education. The organization, which receives no funding from the Federal government, has as its purpose the education of the public on a narrowly focused policy issue which is the subject of on-going hearings and legislative initiatives in Congress. As the Director of Public Education, it will be the responsibility of the spouse to promote the programs and interests of the organization and to increase the public's awareness of the policy issue which is the focus of the organization's efforts.

Discussion:

Only two provisions of the Code of Official Conduct specifically deal with the spouse of a Member: Standing Rule 34 (Public Financial Disclosure) which requires a Senator to disclose the source of any earned income in excess of $1,000 received by a spouse, and Standing Rule 35 (Gifts) which is applicable not only to Members, officers, and employees, but also to spouses and dependents as well. The Committee has also recognized that the compensated employment of spouses is a matter of interest to the public. Thus, in Interpretative Ruling No. 336, dated September 5, 1980, the Committee stated its view that a Senator's spouse's lobbying on behalf of a corporation on whose board the spouse served might, under certain circumstances, reflect adversely upon the Senate as an institution.

Reviewing the facts presented in this case, the Committee noted that the organization which would employ the spouse had a tax exemption from the Internal Revenue Service and therefore, under regulations promulgated by the Service, had agreed to the substantial limitations imposed by the Internal Revenue Code on the lobbying of Members of Congress. The Committee concluded, therefore, that the specific concerns outlined in Interpretative Ruling No. 336 would not be directly applicable to this proposed employment. The Committee further noted that the spouse's employment with the organization would be disclosed on the Senator's public financial disclosure statement. Given heightened public interest in the professional activities of spouses of Members, the Committee expressed its hope that spouses, as well as Members, would conduct their professional and business activities so as not to reflect adversely upon the Senate as an institution.

Ruling:

No Rule of the Senate prohibits the spouse of a Senator from accepting compensated employment with a tax-exempt educational organization where the spouse's responsibilities will be focused on educational activities for the public rather than lobbying the Congress. Such employment must be disclosed by the Senator on the annual public financial disclosure statement as mandated by Rule 34 of the Standing Rules of the Senate.

Interpretative Ruling No. 398

Date issued: May 24, 1985

Applicable Rule: 41

Question considered:

May the salary of an individual employed to perform official duties in a Senator's office be paid one-half from appropriated funds and one-half from the Senator's principal campaign committee?

Facts:

A Senator intends to hire an individual who has such a high degree of expertise that the individual could command a substantially higher salary in the private sector than the Senator is able to

provide from appropriated funds. The Senator proposes to put the individual on the Senate payroll and supplement the employee's Senate salary with funds from his principal campaign committee.

Discussion:

The Senate allows Members to use the services of individuals whose compensation is derived from non-governmental sources. Thus, in Rule 41, paragraphs 4 and 6(a), certain compliance and disclosure requirements were established for Senators who utilized the services of such individuals. In addition, Rule 38 provides that Members may use funds derived from political committees to defray the unreimbursed but official expenses of operating their Senate offices. In Interpretative Ruling No. 248, dated April 27, 1979, the Committee held that a Member could hire a summer intern who would be compensated exclusively from funds derived from the Senator's principal campaign committee.

Ruling:

Having reviewed the precedents, the Committee held that the salary of a Senate employee may be supplemented with funds derived from the supervising Senator's principal campaign committee.

The Committee also stated that paragraph 6(a) of Rule 41 requires that the Senator report to the Select Committee the employment of such an individual in the Senate office. In addition, paragraph 4 of Rule 41 provides that such an individual is to be treated as a Senate employee receiving compensation disbursed by the Secretary of the Senate in an amount equal to the amount of compensation received by the employee from any source for performing services in a Senator's office. Because the application of several provisions of the Code of Official Conduct, including Rule 34, (Public Financial Disclosure), turn on the amount of compensation received by the employee, the Senator's attention was specifically directed to the above-referenced provision in Rule 41.

INTERPRETATIVE RULING No. 399

Date issued: July 15, 1985

Applicable Rule: 35

Question considered:

May a Member accept juices and other products from a company which maintains a separate segregated fund for political purposes?

Facts:

A consumer food products company offered to supply a Member's office with juices and other products for the use of his staff and distribution to visitors to the office. The company, which maintains a separate segregated fund for political purposes, was not a "home State" corporation producing "home State products" as those terms are used in Interpretative Ruling Nos. 17, 267, and 386.

Discussion:

Senate Rule 35 prohibits Members and staff, and their spouses and dependents, from accepting during a year any gift or gifts valued at more than $100 from an organization which has a direct interest in legislation before the Congress. The Rule says such organizations include those which maintain a separate segregated fund for political purposes.

Since the company maintains a separate segregated fund for political purposes, "gifts" worth more than $100 should not be accepted from them. While the Rule provides that this prohibition does not include "meals, beverages, or entertainment consumed or enjoyed", the Ethics Committee has decided to follow the legislative history in confining this exception to events such as restaurant meals. This provision has not been extended to allow the acceptance of products for use or distribution by Members or staff.

Ruling:

The Rule does not allow acceptance of juices and other products worth more than $100.

This Interpretative Ruling should not be read as overruling Interpretative Ruling Nos. 17, 267, and 386 which recognized and approved the historical practice followed in some offices of making home State products, of minimal value, available to constituents and others who visited the office. Such products are most often in the form of food and beverages, such as apples, peanuts, coffee and orange juice. Obviously, these products are provided by businesses back in the Senator's home State, and some of the individuals or organizations involved in providing them may fall within the definition of those with a "direct interest in legislation." Nevertheless, the Committee felt that this time-honored tradition did not involve any conflict of interest and provision of home State products, for this type of distribution, should not be regarded as a gift to the Senator or the office since it is passed on to those visting the office.

INTERPRETATIVE RULING NO. 400

Date issued: August 2, 1985

Applicable Rule and Area: 38, FECA

Question considered:

May a Senator direct that his principal compaign committee open a separate bank account and disburse funds from that account for the purpose of offsetting unreimbursed but official expenses incurred by the Senator in the operation of his Senate office?

Facts:

The principal campaign committee of a Senator would raise contributions and segregate certain of those funds in a bank account which would be opened by the committee and administered separately from other committee accounts, the exclusive purpose of which would be to offset unreimbursed but official expenses incurred in the operation of the Senator's office. The Senator's re-

election campaign committee is concerned about the possible application of certain provisions of the Internal Revenue Code to funds contributed to and then expended by the committee for the purpose of offsetting unreimbursed but official expenses of operating the Senator's office. Contributors to the account would be apprised of its purpose and the possible tax implications of such contributions. The Committee has agreed that the contribution limitations and disclosure provisions of the Federal Election Campaign Act would be fully applicable to this account.

Applicable rule:

Rule 38 of the Standing Rules of the Senate provides that:

> 1. No Member may maintain or have maintained for his use an unofficial office account. The term "unofficial office account" means an account or repository into which funds are received for the purpose, at least in part, of defraying otherwise unreimbursed expenses allowable in connection with the operation of a Member's office. An unofficial office account does not include, and expenses incurred by a Member in connection with his official duties shall be defrayed only from—
>
> (a) personal funds of the Member;
>
> (b) official funds specifically appropriated for that purpose;
>
> (c) funds derived from a political committee as defined in section 301(d) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431); and
>
> (d) funds received as reasonable reimbursements for expenses incurred by a Member to the organization making the reimbursement.
>
> 2. No contribution (as defined in section 301(e) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431)) shall be converted to the personal use of any Member or any former Member. For the purposes of this Rule "personal use" does not include reimbursement of expenses incurred by a Member in connection with his official duties.

The Committee would like to open a separate bank account to be administered solely by the Committee whose purpose would be to offset such office expenses.

Ruling:

A separate bank account to be established by a Senator's reelection committee would be consistent with the provisions of Standing Rule 38 (Unofficial Office Accounts) provided that contributions to the account would be limited to the contribution levels established in the Federal Election Campaign Act, and that contributions received and disbursed by the account would be disclosed as is provided for in the Act. We are of the opinion that contributions received by this separate account could be utilized by the Senator, pursuant to section 1(c) of Standing Rule 38, to defray official but unreimbursed expenses of holding public office.

INTERPRETATIVE RULING No. 401

Date issued: October 3, 1985

Applicable Area: Franking

Question considered:

May a Senator use the frank to send brochures on tourist attractions in his home State to individuals who request tourist information?

Discussion:

The franked mail statute, at 39 U.S.C. section 3210(a)(3)(A), authorizes the franking of mail matter "regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress." *The Regulations Governing the Use of the Mailing Frank* provide, with regard to this provision, that "[t]hese matters generally relate to legislative actions or the official business of a Senator's office and must relate principally to the Federal government." Since these provisions restrict the use of the mailing frank to materials relating to the activities of the Congress and the Federal government, tourist information about a Member's home State would not be frankable mail matter.

Ruling:

The mailing frank may not be used to send brochures on State tourist attractions.

INTERPRETATIVE RULING No. 402

Date issued: October 18, 1985

Applicable Rules: 37, 41

Question considered:

May a Senator's personal secretary receive compensation from her employing Senator's principal and multi-candidate campaign committees for the political services she is performing for these committees?

Facts:

A Senator's personal secretary devotes some time in the evenings and on weekends consulting with her employing Senator's campaign committee and multi-candidate committee. The employing Senator emphasizes that the services she performs take place during her off-duty hours and during the established and reasonable periods of vacation time provided to his staff. Her campaign committee responsibilities include matters relating to the Senator's political schedule, identification of prior and potential contributors, and preparation of the reports required by the Federal Election Campaign Act. She is designated as one of the Senator's staff who is allowed by Senate Rule 41 to receive, solicit, and disburse campaign funds.

Discussion:

Senate Rule 41 sets forth the general rule that Senate staff are not allowed to solicit, receive or disburse campaign funds. The Rule provides, however, that each Senator may designate as many as two individuals on his personal staff who are allowed to receive, solicit and disburse campaign funds for a committee or committees established by a Senator. In light of the Senator's designation of his secretary to perform these functions, she is allowed to do so under Senate Rules.

The Committee has ruled on a number of occasions that a Senate employee may engage in political activity not involving the solicitation, receipt, custodianship or distribution of campaign funds outside of regular office hours, on weekends and during regular and reasonable periods of vacation time.

Finally, the Senate Conflict of Interest Rule (Rule 37) allows Senate staff to receive compensation for non-Senate employment so long as the employment is not inconsistent or in conflict with the conscientious performance of official duties. Paragraph 3 of Rule 37 requires that an employee's supervising Senator make the initial determination that no conflict exists. In light of the Senator's apparent determination that his secretary's services for his campaign committees do not conflict with her Senate duties, her receipt of compensation is not prohibited by Senate Rules. However, the Senator must continue to monitor the employee's outside activities so that they will not give rise to a conflict of interest.

Ruling:

The staffer may receive compensation from the employing Senator's principal or multi-candidate campaign committee for the services she is providing.

INTERPRETATIVE RULING NO. 403

Date issued: October 30, 1985

Applicable Rule: 34

Question considered:

Is a reporting individual required to disclose the acceptance of travel-related expenses from subdivisions of State governments, such as counties, cities, and municipal water authorities?

Applicable rule:

Section 107(8) of the Ethics in Government Act of 1978 (Rule 34) provides:

> (8) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—
>
> (A) provided by the United States Government, the District of Columbia, or any State or political subdivision thereof . . .

Ruling:

The law's exclusion for reporting travel-related expenses received from a *"State or political subdivision thereof"* (emphasis added) indicates that counties, cities, or municipal water authorities are not sources of travel expenses which are required to be listed on a public financial disclosure report.

INTERPRETATIVE RULING No. 404

Date issued: November 18, 1985

Applicable Rule: 34

Question considered:

May a Senator who is planning to establish a qualified blind trust appoint as trustee an individual who is treasurer of his principal campaign committee?

Discussion:

The Ethics in Government Act of 1978 requires that a trustee of a qualified blind trust must be among other things "independent of, and unassociated with, any interested party" (section 102(e)(3)(A)(i)). The legislative history of this provision indicates that a trustee's independence should be evaluated both as a question of fact and as a question of appearances. On the basis of fact, there is no reason for any doubt about the integrity of the campaign treasurer, or about his ability to fulfill the duties of trustee. On the basis of appearance, however, the legislative history states that the drafters of the law intended that an individual who had been a Senator's campaign manager would not be a suitable trustee (S. Rept. 95–639, p. 17 (1978)). In light of this background, we believe a Senator should not choose his campaign treasurer as trustee for a qualified blind trust.

Ruling:

The treasurer of a Senator's principal campaign committee would not be a suitable trustee.

INTERPRETATIVE RULING No. 405

Date issued: December 18, 1985

Applicable Rule: 38

Question considered:

May a Member borrow money from his principal campaign committee?

Facts:

A Member asked whether he may borrow money from his principal campaign committee, with the loan to be secured by a promissory note which establishes an interest rate comparable to prevailing commercial interest rates.

Discussion:

The Senate in 1968 established a Rule which provided that Senators may only use campaign funds for political or official purposes, and that Senators "shall not use directly or indirectly any part of any contribution for any other purposes." The text of Rule 38 as it exists today "essentially restates" this 1968 Rule, according to the 1977 committee report which accompanied the current Senate Code of Official Conduct.

In addition, the influential position a Member holds in deciding upon the disposition of funds held by his campaign committee could have the effect of making the Member both the lender and the borrower. Fulfilling these two roles may present the appearance of, or an actual, conflict of interest.

Finally, the Ethics Committee cannot assume the role of judging the adequacy of the security, interest rate, and repayment terms of routine borrowing by Members. That role is better fulfilled by Members making their financial transactions with independent lenders and having their financial arrangements scrutinized through their public financial disclosure reports.

Ruling:

The historical background of Senate Rule 38, and other considerations, indicate that the Rule does not allow a Member to borrow from his principal campaign committee.

INTERPRETATIVE RULING NO. 406

Date issued: December 18, 1985

Applicable Area: Foreign Gifts and Decorations Act

Question considered:

May Members keep gifts which have a value of more than $100 if those gifts are given by foreign governments?

Ruling:

The Foreign Gifts and Decorations Act provides that any Federal official, including any Member, officer, or employee of the Senate, who receives from a foreign government a gift of more than "minimal value" is required to deposit the gift with the Secretary of the Senate for disposal. The Act also provides that the Select Committee on Ethics may allow such gifts to be retained and used by the Member, officer, or employee during his Senate tenure.

Pursuant to its authority under the Foreign Gifts and Decorations Act, the Select Committee has determined that any gift having a value of over $100 given to Members, officers, and employees of the Senate by a foreign government shall be deemed to be of more than "minimal value" for purposes of the Act and shall therefore be deemed to have been accepted on behalf of the United States Government. If a Senator who receives from a foreign government a gift of more than "minimal value" and would like the Committee to authorize the display or use of the gift in his Senate office, he should contact the Committee.

INTERPRETATIVE RULING No. 407

Date issued: January 28, 1986

Applicable Area: Use of Senate Letterhead

Question considered:

May a Senator use letterhead including the words "United States Senate" for letters to be sent from his office to individuals who have achieved a "personal distinction"?

Discussion:

In 1978, the Select Committee issued an advisory opinion on the use of "United States Senate" letterhead which held that Members could not use such letterhead for letters sent out over their signatures by a non-Senate organization but could use such letterhead for other correspondence from their offices.

In 1981, the Congress repealed that portion of the franking statute (39 U.S.C. section 3210 et seq.) authorizing the use of the frank for letters of congratulations to individuals who had achieved some "personal distinction", but retained authority for sending under the frank letters congratulating those who had achieved a "public distinction."

The Committee concluded that the recision of the authority to use the frank for congratulatory letters to individuals who had achieved a "personal distinction" had not limited the right of Members to use "United States Senate" letterhead for such mailings.

Ruling: Yes.

INTERPRETATIVE RULING No. 408

Date issued: March 12, 1986

Applicable Area: Advisory Opinion on Use of Letterhead

Question considered:

Is the Advisory Opinion of the Select Committee, issued on August 14, 1978, regarding the use of letterhead and/or envelopes which utilize the words "United States Senate" and "Official Business" or any combination thereof, applicable to a Senator's personal use of such letterhead which contains a solicitation of funds or support for a campaign for election or reelection to any Federal, State, or local office?

Advisory Opinion:

"It is the opinion of the Select Committee that it is improper conduct which reflects upon the Senate for a Senator to authorize or allow a non-Senate individual, group, or organization to use the words 'United States Senate' and 'Official Business,' or any combination thereof, on any letterhead or envelope. The use of a Senator's name followed by the words, 'United States Senate', is not hereby deemed improper."

Facts:

In an invitation which was written on official Senate letterhead which includes the words "United States Senate, Washington, D.C., 20510", a Senator invited individuals to a dinner which was directly connected to the raising of funds for his campaign for reelection. The letter of invitation was prepared by the Senator himself and was sent from his office.

Discussion:

The Select Committee's Advisory Opinion of August 14, 1978 on the use of the words "United States Senate" on letterhead and envelopes was prompted by the receipt of a substantial amount of correspondence from the public concerning the use by non-Senate groups and organizations of facsimiles of United States Senate letterhead in their fundraising appeals. Typically, prior to August 14, 1978, a Senator would agree to write a fundraising letter on behalf of a non-Senate group or organization and allow that organization to include the Senator's letter in a fundraising appeal to be sent by that group or organization. In most instances, the Senator's letter was written on a facsimile of official United States Senate letterhead and in many instances was mailed in envelopes which bore the return address of the United States Senate. The concern expressed by the public was that they were misled into believing that the mailing was from the Senator whose letterhead was used when, in fact, it was really from a private group. As a result, the Committee developed an Advisory Opinion, pursuant to its authority under S. Res. 110 and S. Res. 338, to issue Advisory Opinions on actions which might tend to reflect discredit upon the Senate. The Advisory Opinion concluded that it was improper for a Member of the Senate to allow a non-Senate organization or group to use letterhead or envelopes which contained the Words "United States Senate" and/or "Official Business." During the development of the Advisory Opinion, concern was expressed by some Members of the Committee that while the Advisory Opinion should restrict the use of Senate letterhead by non-Senate groups or organizations, such as campaign committees, the Advisory Opinion should not preclude a Senator's personal use of his letterhead for whatever correspondence the Senator thought appropriate. As a result, the Advisory Opinion included, as a last sentence, a proviso that "the use by a Senator of his or her own name followed by the words 'United States Senate' is not hereby deemed improper."

Since the adoption of this Advisory Opinion, the Committee has been asked by Senators on several occasions about the application of the Advisory Opinion to various types of mailings in which the Senator was interested. In these Interpretative Rulings, the Committee has taken the position that while it is improper and a violation of the Advisory Opinion for a Senator to allow a campaign committee or any other non-Senate organization to prepare a mailing which uses letterhead that contains the words "United States Senate" on the masthead of the letter (see, Interpretative Ruling Nos. 169 and 254), the Advisory Opinion would not preclude a Member from writing a personal letter on Senate letterhead from his own office (see, Interpretative Ruling Nos. 264, 270, and 365).

Because of a concern that the last sentence of the Advisory Opinion was being interpreted too broadly by Members and staff, the Committee reviewed the previous interpretations of the application of the Advisory Opinion and concluded that the Advisory Opinion does preclude a Senator from using letterhead and/or envelopes containing the words "United States Senate" and/or "Official Business", or any combination thereof, for any correspondence, even that prepared personally by the Senator, which solicits a financial contribution or other form of assistance for any campaign for election or reelection to any Federal, State, or local office. Where a Senator desires to correspond with members of the public about a campaign-related matter, such correspondence should be prepared on letterhead which has been paid for by the Senator's personal funds or funds derived from his campaign committee and which does not employ the words "United States Senate" and/or "Official Business."

Ruling:

The Select Committee's Advisory Opinion of August 14, 1978 on the use of official letterhead does apply to and therefore restricts a Senator's personal use of letterhead and/or envelopes which utilize the words "United States Senate" and/or "Official Business" or any combination thereof, where the correspondence involves a request for a financial contribution or other form of assistance for any campaign for election or reelection to any Federal, State or local office. Additionally, this ruling would preclude the use of such official letterhead by a Senator to write "thank-you" letters to contributors or campaign workers.

Lastly, through previous Interpretative Rulings, the Select Committee has approved the use of letterhead, by a Senator, which uses the Senator's name followed by "United States Senator." This latter form of letterhead could be used to address correspondence which involved campaign-related topics, including "thank-you" notes for participation in a campaign.

INTERPRETATIVE RULING NO. 409

Date issued: March 14, 1986

Applicable Rule: 38

Question considered:

Does the Rule 38 requirement, that expenses incurred by a Senator in connection with his or her official duties be defrayed only from certain enumerated sources, prohibit a Senator (as a Chairman or a member of a committee or subcommittee of the Senate), or a Senate staffer (as an employee of a committee or subcommittee), from accepting either funds or donated "in-kind" goods or services for use by the committee or subcommittee?

Discussion:

On December 10, 1980, the Select Committee issued Interpretative Ruling No. 341 which held that Rule 38 was *not* applicable to committees of the Senate but rather applied only to the defrayal of

unreimbursed office expenses by Senators in their individual capacities. Since that Ruling was issued, the Select Committee has been asked about the application of Rule 38 to various activities by Senate committees and subcommittees. In reviewing its holding in Interpretative Ruling No. 341, the Select Committee was concerned that a decision to place committees and subcommittees outside the restrictions of Rule 38 did not serve the best interests of the Senate or the public.

Reviewing the legislative history of Rule 38, especially Senate Report 95–49, 95th Congress, the report of the Special Committee which authored Rule 38 in 1977, and the floor debate which occurred in March and April of 1977 on the adoption of Rule 38, the Select Committee found *no* legislative history to support the view that the Senate had intended to place outside the scope of the Rule's prohibitions, officially related acts carried out through Senate committees or subcommittees.

Ruling:

Interpretative Ruling No. 341, dated December 10, 1980, is specifically reversed. It is now the position of the Select Committee that Rule 38 specifically applies to Senate committees and subcommittees and that, as a result, committees and subcommittees may not defer unreimbursed but official expenses except as is provided for in Rule 38. Thus, Rule 38 prohibits the defrayal of the officially related expenses of Senators, Senate committees and subcommittees, by private sources other than those otherwise authorized in the Rule.

Interpretative Ruling No. 410

Date issued: April 3, 1986

Applicable Rules: 34 and 35

Question considered:

Under what circumstances may a Member, officer or employee of the Senate accept travel expenses for a speech or appearance from an organization or entity which is affiliated in some way with the sponsoring organization?

Facts:

A major domestic trade association was holding its annual meeting in San Francisco. The association invited a Senator to address the annual meeting and offered to provide the Senator with round-trip air transportation between his home State and San Francisco. In making the travel arrangements for the Senator, the trade association asked one of its members, a company which was headquartered in the Senator's state and which owned its own corporate aircraft, to provide a seat to the Senator on the affiliate's plane since that plane was already taking company executives to the association's annual meeting.

Discussion:

In addressing the application of the "necessary expense" exception (Rule 35, paragraph 2) to these particular facts, the Committee reviewed previous interpretations of the "necessary expense" exception, especially the scope of Interpretative Ruling No. 41, dated July 1, 1977. Interpretative Ruling No. 41 directed that Senators, who had been offered travel expenses for an appearance from an entity that is defined in Rule 35 as a "prohibited source", could only accept travel reimbursements from the actual sponsor of the appearance. Under the terms of that Ruling, if the travel reimbursement was to be provided by a "member of the group sponsoring the address", rather than the sponsor itself, either the sponsor would have to reimburse the affiliated entity which offered to provide the Senator's transportation or the Senator would have to reimburse the affiliated entity directly.

The Committee's review of Interpretative Ruling No. 41 and the legislative history surrounding Rule 35, as it applies to the reimbursement of travel in connection with a Senator's appearance on behalf of a sponsor, led the Committee to the conclusion that Interpretative Ruling No. 41 was too narrowly drawn. In the Committee's view, the Rule 35 exception which allows Senators to accept travel reimbursements from the sponsor of an appearance, even when that sponsor might be a "prohibited source" for other applications of Rule 35, extends as well to groups which are formally affiliated with the sponsor of the Senator's appearance and which offer travel arrangements to the Senator on behalf of the sponsor. In that regard, the Committee agreed to several tests for determining whether a group was sufficiently affiliated with the sponsor of a Senator's appearance so as to allow that Senator to accept travel arrangements from that group, within the confines of Rule 35. Where the sponsor of a Senator's appearance asks an affiliated group to provide travel arrangements to the Senator in connection with that appearance, the tests for making such a determination are as follows: either (1) the group is a member in good standing of the sponsoring organization, or (2) the directors, principal officers, or trustees of the group are the directors, principal officers, or trustees of the sponsoring organization, or (3) there is a direct corporate and/or financial relationship between the sponsoring organization and the group.

Ruling:

Under Rule 35, a Member, officer, or employee of the Senate may accept necessary travel expenses in connection with an appearance made by that individual, from a group or entity, which although it is itself not the sponsor of the appearance, has been requested by the sponsor to provide the travel arrangements and is sufficiently affiliated with the sponsor so as to allow the Senator or employee to accept the travel expenses within the confines of the "necessary expense" exception to Rule 35. A group or entity is sufficiently affiliated with a sponsor if either (1) the group is a member in good standing of the sponsoring organization, or (2) the directors, principal officers, or trustees of the group are the directors, principal officers, or trustees of the sponsoring organization,

or (3) there is a direct corporate and/or financial relationship between the sponsoring organization and the group.

INTERPRETATIVE RULING No. 411

Date issued: May 8, 1986

Applicable Rules: 34, 41

Question considered:

Must an individual who was a "political fund designee" and a Senate employee for only the first three days in 1985 file a financial disclosure report for that calendar year on May 15th of this year?

Applicable rule:

Senate Rule 41, which allows a Senator to designate an employee on his staff to receive campaign contributions, also provides that the designated employee must file annual disclosure reports for those years during which the designation was in effect.

Discussion:

Senate Rule 41 was adopted as part of the Senate Code of Official Conduct in 1977. The proposed Code included a financial disclosure provision (Senate Rule 34) specifically requiring disclosure by political fund designees and all employees who were paid at a rate in excess of $25,000 a year. That Rule also provided that if a political fund designee or Senate employee whose rate of pay would require that employee to file an annual disclosure statement left the payroll during the calendar year, he or she was required to file a financial disclosure statement on his or her last day of employment. That statement was to contain information for the calendar year to the date of termination.

In 1978, the disclosure provisions of the Ethics in Government Act superseded the disclosure requirements adopted as part of the Code of Conduct in 1977. The Ethics in Government Act requires Senators, and Senate employees who make at or above the GS–16 rate of pay for more than 60 days during a calendar year, and who are in office on May 15th of the subsequent year, to file an annual financial disclosure statement. Thus, if a Senator (or an employee) is in office on May 15th, 1986, he must file a report for calendar year 1985. However, if a Senator (or Senate employee) left office before May 15, 1986, no disclosure for calendar year 1985 would be required. The Act does not mention political fund designees.

While the statute provides that, pursuant to Senate or House Rules, a Legislative Branch employee who makes at the GS–16 rate could be required to file financial disclosure reports for that portion of the year during which he or she was a Legislative Branch employee, the Senate has not adopted any rule requiring such disclosure.

Ruling:

Political fund designees who are not in office on May 15th need not file financial disclosure reports for the preceding calendar year.

INTERPRETATIVE RULING NO. 412

Date issued: August 11, 1986

Applicable Rules: 34, 35, and 38

Question considered:

For purposes of Senate Rules, what value is ascribed to the use of a private airplane?

Applicable Senate rules:

Gift Rule (Rule 35), Prohibition of Unofficial Office Accounts (Rule 38); Disclosure (Rule 34, Ethics in Government Act).

Discussion:

In some circumstances, a Member who uses a private airplane is required to reimburse the provider of the aircraft to avoid either a prohibited gift under the Senate Gift Rule or a prohibited in-kind contribution to an unofficial office account. Senate Rule 38 (Prohibition of Unofficial Accounts) generally prohibits private sources from providing funds or services to defray a Member's officially related expenses. Thus, if a friend offers to loan a Member an aircraft to attend town meetings across the Member's home state, the Member must reimburse for the use of the aircraft to comply with Rule 38. Senate Rule 35 (Gifts) prohibits Members from accepting from an individual or organization with a direct interest in legislation, gifts aggregating over $100 in a calendar year. Thus, if a lobbyist offers a Member the use of his airplane to fly the Member on a vacation trip, and if the value of the use of the airplane is over $100, the Member must provide reimbursement to comply with Rule 35.

In most circumstances, where reimbursement is not required, the Member will still need to determine the value of the use of the aircraft because, if the value is $250 or more, the use of the aircraft must be disclosed on the Member's annual financial disclosure forms.

In determining the value of an item for both reimbursement and disclosure purposes, the Committee has consistently stated that the applicable standard is the value of the item to the recipient. In the use of private aircraft, the Committee concluded that the value to a Member would be the cost he would have to incur to purchase the same level of service in the open market. The Committee felt that the level of service generally provided in using private aircraft is most nearly equivalent to first-class service provided by commercial carriers where such commercial service is available. Where no regularly scheduled commercial service is available, to obtain the same service provided by the use of a private aircraft, a Member would be required to charter an airplane.

Ruling

The Committee has agreed on the following method for calculating the value of the use of an aircraft for both reimbursement and disclosure.

1. If the cities between which the Member is flying have regularly scheduled air service, regardless of whether such service is direct, then the value of the use of the aircraft is the cost of a first-class ticket from the point of departure to the destination.

2. If the cities have regularly scheduled air service, but only a standard (coach) rate, then the value of the use of the aircraft is the coach rate.

3. If either the city from which the Member flies or his destination does not have regularly scheduled air service, then the value of the use of the aircraft is the cost of chartering the same or a similar aircraft for that flight.

The Committee notes that its ruling is generally consistent with Federal Election Commission regulations pertaining to the use of private aircraft by candidates for Federal office.

The Committee further notes that the Committee on Rules and Administration has adopted travel regulations pertaining to the level of reimbursement to be provided from official funds to Members who seek such reimbursement for air transportation costs they have paid. Our ruling addresses only the reimbursement which Members must make to the individual or organization whose aircraft he uses, not the level of reimbursement Members may receive from official funds.

INTERPRETATIVE RULING No. 413

Date issued: September 22, 1986

Applicable Rule: 34

Question considered:

Are there any circumstances under which a candidate for nomination or election to the Senate, who has taken the steps necessary under state law to withdraw his or her candidacy, may be excused from the obligation established by the Ethics in Government Act, amended, to file a Public Financial Disclosure Statement?

Discussion:

The Ethics in Government Act, amended, 2 U.S.C. 701 et seq., generally requires the filing of a Public Financial Disclosure Statement by all candidates for nomination or election to the Senate.

The Act contains the following provisions concerning a candidate's obligation to file Public Financial Disclosure Reports. Under 2 U.S.C. section 707(9), "candidate" is defined as:

> an individual, other than a Member, who seeks nomination for election, or election, to the Congress whether or not such individual is elected, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, (A) if he has taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) if he or his principal campaign committee has taken action to register or file campaign reports required by section 304(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(a))

A candidate's disclosure obligations are set forth in 2 U.S.C. section 701(d):

> Within thirty days of becoming a candidate in a calendar year for any election to the office of Member, or on or before May 15 of that calendar year, whichever is later, but in no event later than seven days prior to the election, and on or before May 15 of each successive year the individual continues to be a candidate, an individual shall file a report containing the information as described in section 702(b) of this title. Notwithstanding the preceding sentence, in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, such individual need not file a report unless he becomes a candidate for another vacancy in that office or another office during that year.

The next section of the statute which applies to a candidate's filing obligation is 2 U.S.C. section 701(f), which provides that:

> [r]easonable extensions of time for filing any report may be granted by the designated committee of the Senate with respect to those filing with the Secretary . . . but in no event may the extension granted to a Member or candidate result in a required report being filed later than seven days prior to an election involving the Member or candidate. If the day on which a report is required to be filed falls on a weekend or holiday, the report may be filed on the next business day.

In addressing the question posed above, the Select Committee sought the views of the Civil Division of the Department of Justice, which is charged, by the Act, with responsibility for enforcing the Act. In the view of the Department of Justice:

> . . . an individual who meets the definition of "candidate" contained in section 707(9), but who does not comply with the filing requirements of section 701(d), and does not obtain an extension as permitted by section 701(f), has committed a *prima facie* violation of the Act. If, however, a candidate withdraws before his financial disclosure is due, whether under the original or an extended deadline, that candidate would be excused from compliance.

The Department of Justice has thus drawn a distinction between individuals who have become "candidates" under section 707(9) of the Act, but who have not filed the requisite disclosure statement under section 701(d), on the one hand, and those "candidates" who have requested and received an extension of time for filing the disclosure report from the Select Committee, pursuant to the authority found at section 701(f) of the Act, on the other hand.

In the view of the Department of Justice:

> The Act does not contain any exemption for individuals who have become "candidates" within the terms of section 707(9), but taken steps necessary under state law to terminate their candidacy prior to the election.

This conclusion is based upon the fact that:

> The legislative history of the Ethics in Government Act provides no basis for exempting candidates who, after their filing deadline passes, withdraw prior to the election in which they intended to participate.

The Department bases its conclusion upon the understanding that it was the principal objective of the Congress, in agreeing to the public financial disclosure requirement for candidates, as found in the Act:

> . . . to place candidates "in the exact same position with respect to financial disclosure as an incumbent holder of that office" (1978 U.S. Code Cong. & Ad. News 4216, 4238). If an incumbent is exposed to civil penalties for failing to timely file, while a non-incumbent is able to avoid filing by the expedient of withdrawing from the race immediately before the election, then the legislative purpose of putting the two individuals on equal footing is thwarted. The non-incumbent candidate will have both avoided providing the required information, and been able to remain a candidate throughout the campaign period while not revealing his financial status to the electorate.

Ruling:

There are two, and only two, circumstances under which a candidate for nomination or election to the Senate, who has taken the steps necessary under state law to withdraw his or her candidacy, will be excused from the obligation to file a Public Financial Disclosure Statement: (1) where the candidate withdraws his candidacy *before* his financial disclosure statement is due, under the deadline set forth at 2 U.S.C. 701(d); or (2) where the candidate withdraws his candidacy *before* the deadline established by an extension of time for filing granted by the Select Committee, pursuant to 2 U.S.C. 701(f).

INTERPRETATIVE RULING No. 414

Date Issued: November 18, 1986

Applicable rules: 34, 35

Question considered:

What is the application of Rule 34 ("Public Financial Disclosure") and Rule 35 ("Gifts") to the acceptance by a Senator of a trophy which was presented because of the Senator's winning an athletic contest?

Facts:

A Member of the Senate was invited to participate in several different tennis tournaments. On one occasion, the Senator participated in, and won, a tournament sponsored by a Washington, D.C. tennis facility. In the second instance, a Senator participated in, and won, a celebrity tennis tournament sponsored by the Washington, D.C. office of a major American corporation. In the latter in-

stance, the corporate sponsor of the celebrity tennis tournament would be described as a "prohibited source" for purposes of Rule 35 because the corporation maintained both a political action committee registered with the Federal Election Commission, and retained lobbyists who were registered under the 1946 Federal Regulation of Lobbying Act. In both instances the fair market value of the trophy presented to the Senator was in excess of $100.

Discussion:

In 1980, the Select Committee considered a somewhat similar question posed by a Senator who asked about his wife's acceptance of an airplane ticket which had been awarded to her as a result of a "door-prize" drawing at a charitable fund-raising event. In that instance, the Committee ruled that the prize was not covered by any rule of the Senate Code of Official Conduct, and that as a result, there was no prohibition or restriction on the Senator's spouse regarding the acceptance of the "door-prize". Applying this 1980 precedent to the facts presented above, the Select Committee concluded that the Code of Official Conduct should not prohibit a Member, officer, or employee of the Senate from accepting a trophy presented by the sponsor of an athletic event to the winner of the athletic contest.

While the committee determined that Rule 35 ("Gifts") would not preclude the acceptance of such a trophy or award, Rule 34 ("Public Financial Disclosure") would require an individual who filed an annual public financial disclosure statement under Rule 34 to disclose the acceptance of such a trophy where the fair market value of the trophy was determined to be in excess of $100. The Select Committee, drawing upon the treatment of such trophies and awards by the Internal Revenue Service, concluded that such trophy should be disclosed in the "income" section of the individual's public financial disclosure statement.

Ruling:

The acceptance or retention of a trophy or award presented to a Member, officer, or employee of the Senate by the sponsor of an athletic contest in recognition of the Member, officer, or employee winning the competition is outside the scope of Rule 35 ("Gifts"). However, Rule 34 ("Public Financial Disclosure"), would require the disclosure of the acceptance of such a trophy or award in the "income" section of a reporting individual's annual public financial disclosure statement where the fair market value of the trophy or award was in excess of $100.

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